

Decision \_\_\_\_\_

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

In the Matter of the Application of Southern California Edison Company (U 338-E) for Authority to Lease Available Land on the Lighthipe-Del Amo Transmission Right of Way to RHC Communities, LLC.

Application 02-02-014  
(Filed February 14, 2002)

**OPINION AUTHORIZING PROPERTY LEASE****Summary**

Southern California Edison Company (SCE) is authorized to lease to RHC Communities, LLC, (RHC) a site on SCE's Lighthipe-Del Amo transmission right of way in the City of Long Beach.

**Background**

SCE seeks Commission authorization under Pub. Util. Code § 851 to lease to RHC a 5.69-acre site located on a portion of SCE's Lighthipe-Del Amo transmission right of way in Long Beach. The right of way is part of the Lighthipe-Del Amo 220 kilovolt system and includes Commission-jurisdictional facilities. RHC will use the site to construct and operate a self-storage and vehicle and boat storage facility.

This is one of 24 sites for which SCE and RHC executed a single master option and lease agreement ("agreement") on September 6, 2001. The agreement fully defines the terms of the proposed leases and gives RHC 30 days after the Commission's approval of each lease site to accept any conditions the Commission may impose and exercise its option for that site. The Commission

earlier examined the agreement's terms, SCE's selection of RHC as the master lease developer, and SCE's proposed revenue treatment when it issued Decision 03-03-035 authorizing a transmission right of way lease in the City of Orange. The terms of the agreement are common across all 24 sites, the only differences being the option expiration dates and each site's unique base rate rent schedule

### **Lease Terms**

Pursuant to the agreement, RHC has the right, subject to Commission approval, to lease the site from SCE for a period of 65 years beginning on the date RHC exercises the option. The base annual rent for this Long Beach site for the first four years is to be:

Year 1	\$ 16,000
Year 2	\$ 55,000
Year 3	\$117,000
Year 4	\$180,000

The base rent for each year thereafter is to increase by the Consumer Price Index for Urban Consumers for the Los Angeles-Long Beach-Riverside area, with a 3% annual cap. At the end of each calendar year, starting in Year 1, RHC will pay as additional rent the amount by which 20% of its calendar year gross revenues exceeded the base rent paid during that year. If RHC sublets all or any part of the site, SCE reserves the right to adjust the base rent to the new fair rental value.

Terms of the agreement provide that RHC's activities must not interfere with SCE's operations or facilities on the site, it may not use or store hazardous substances, explosives or flammable materials on the site, and it must maintain minimum specified vertical and horizontal clearances from SCE's towers, poles, pole anchors, and overhead conductors.

SCE retains various rights under the agreement, including the rights to:

- Approve RHC's construction plans and specifications
- Enter the site at any and all reasonable times to inspect the property
- Impose temporary restrictions on RHC's right to enter, occupy and use the site in order to perform necessary work on the electrical facilities located on the site and
- Take back all or part of the leasehold by eminent domain or inverse condemnation.

Under the agreement RHC is required to:

- Pay all personal property taxes, general or special assessments, or other fees levied against the site or the improvements to be constructed thereon
- Obtain all permits and approvals for construction and any zoning changes or use permits required for operation of its business on the site
- Maintain appropriate comprehensive general liability, auto liability and worker's compensation insurance and
- Indemnify SCE against all liability for damages or injury to persons on the site except to the extent caused by SCE's negligent or willful misconduct.

### **Determination of Best Secondary Use**

The primary use of facilities located on the Site is the transmission and distribution of electricity in and around Long Beach. SCE's aboveground electric lines crossing the site, and their associated restrictions and height clearances, limit the potential secondary uses. SCE states that its objective has been to select secondary uses for its property that provide the highest revenue consistent with its utility safety and reliability obligations, and that it has determined that the RHC project meets that objective. To evaluate the rental potential of the site, SCE engaged The Call Company, a self-storage consulting and management firm, to

prepare a market analysis of storage facilities in the Long Beach area. Based on that analysis, SCE believes that the rent it will receive falls within the expected market range and is in line with revenues it receives from similar Commission-approved transactions.

### **Lessee Selection**

To begin the selection process, SCE sent out The Call Company's extensive market analysis on each of the available properties to 16 major real estate developers and asked each to submit an overall project proposal. Those developers were then screened on the merits of their project proposal and their property entitlement experience, credit background, financial strength, and development experience.

SCE states that it selected RHC because of RHC's impressive project proposal, superior land entitlement team, development experience, and financial offer. RHC is based in Tustin, California and has approximately 70 employees. According to SCE, RHC has acquired and managed nearly 2,000 apartment units and 4,000 manufactured home spaces in California since its inception in 1979. Over the last 15 years, RHC has purchased 21 manufactured housing communities at an approximate cost of \$150 million. SCE's application describes the extensive, relevant background and experience of RHC's president, its chief operating officer, and its chief financial operator.

### **CEQA Considerations**

#### **Procedural Background**

The California Environmental Quality Act (CEQA, Public Resources Code Sections 21000, et seq.), applies to discretionary projects to be carried out or approved by public agencies. A basic purpose of CEQA is to inform

governmental decision-makers and the public about the potential, significant environmental effects of the proposed activities.

Since the proposed project is subject to CEQA and the Commission must issue a discretionary decision without which the project cannot proceed (i.e., the Commission must act on the application before it for an approval of a lease agreement subject to Pub. Util. Code § 851), the Commission must act as either a Lead Agency or a Responsible Agency under CEQA. The Lead Agency is the public agency with the greatest responsibility for supervising or approving the project as a whole.<sup>1</sup>

Here, the City of Long Beach Redevelopment Agency (City) is the Lead Agency for the project under CEQA. The Commission is a Responsible Agency for this proposed project under CEQA. CEQA requires that the Commission consider the environmental consequences of a project that is subject to its discretionary approval. In particular, the Commission must consider the Lead Agency's environmental documents and findings before acting upon or approving the project.<sup>2</sup> The specific activities which must be conducted by a Responsible Agency are contained in the CEQA Guidelines, Section 15096.

The City issued a Notice of Preparation and Initial Study on August 30, 1995, and issued a Draft Environmental Impact Report (EIR) in March 1996 for the North Long Beach Redevelopment Project. Subsequent to a public comment period, a Final EIR was published in June 1996. The City certified the Final EIR

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<sup>1</sup> CEQA Guidelines (Title 14 California Code of Regulations), Section 15051(b).

<sup>2</sup> CEQA Guidelines, Section 15050(b).

on July 2, 1996, by Resolution No. R.A. 10-96, and adopted a statement including findings, overriding considerations, and a mitigation monitoring plan.

The project before the Commission is the application by SCE pursuant to Pub. Util. Code § 851 for approval of a lease of a 5.69-acre site on SCE's transmission right of way to RHC for a self-storage facility and vehicle and boat storage facility. The site is within the geographic area of an ongoing redevelopment project in Long Beach and within the activities considered in the EIR for that redevelopment project. The site is zoned for general industry and is considered an industrial area. RHC's proposed use of the right of way is consistent with that use. The street access to the site is a dedicated truck route, and access to the site by vehicles will not be disruptive.

The lease is part of the North Long Beach Redevelopment Project that was the subject of the redevelopment EIR, and RHC's proposed project is consistent with the purpose of that redevelopment. Public Resources Code Section 21090 and the CEQA Guidelines, Section 15180, provide that an EIR on a redevelopment plan is regarded as similar to a program EIR, and no subsequent EIRs are required for activities undertaken subject to the redevelopment plan or for individual components of the redevelopment plan, unless the activity is one that requires a subsequent or supplemental EIR under Public Resources Code Section 21166. The City has reviewed the specific proposal of RHC and has concluded that no supplemental or subsequent EIR is required.<sup>3</sup> We concur with the City and conclude that the lease that is the subject of this application qualifies for the treatment authorized in Public Resources Code Section 21090 and the

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<sup>3</sup> Appendix D to Application 02-02-014.

CEQA Guidelines, Section 15180, and no further environmental review is required by this Commission.

### **Project Alternatives and Objectives**

The North Long Beach Redevelopment Project EIR indicated that the objectives of the redevelopment project included among others: elimination and prevention of the spread of blight and deterioration; promotion of public and private sector improvement of the area; creation of localized job opportunities; increased sales, business license and other resources; and creation of increased housing opportunities in the project area. The primary emphasis of the redevelopment project was to improve the commercial corridors. Activity in the residential areas would generally be limited to preservation and rehabilitation.

The EIR analyzed five alternatives to address impacts that were identified as of concern to the North Long Beach community, including the “no project” alternative. These alternatives were: No Project; No Eminent Domain; Limited Eminent Domain; Small Redevelopment Area; and Alternative Methods. The EIR found that all of the alternatives were feasible, but that only the proposed redevelopment project was viable and achieved the goal of removing blight. The redevelopment project was found to be environmentally superior because only the proposed project could meet the City’s basic goal of blight removal; the alternatives could not. The City made findings and reached this conclusion in Section IV of Exhibit A, page 10, of Resolution No. R.A. 10-96 of the Redevelopment Agency of the City of Long Beach. We concur with the City’s findings and conclusion that the proposed project is the superior environmental alternative, meets the project objectives, and is the preferred alternative.

### **Environmental Impacts**

The North Long Beach Redevelopment Project EIR identified eight resource areas where the redevelopment project would have no significant impact on the environment: physiography, oil extraction, short-term air impacts,



flooding, noise, population and housing, public services, and cultural resources. The City's EIR also identified three potential significant environmental impacts that the redevelopment project could cause in the areas of risk-of-upset (hazardous waste remediation) and utilities (storm drain system impacts and solid waste disposal impacts). All of these impacts will be fully avoided through the adoption of feasible mitigation measures. The City's EIR identified one additional potential significant environmental impact that would remain significant and unavoidable in the area of long-term cumulative air quality, primarily due to increased vehicle emissions associated with redevelopment. In considering the EIR for the project, the City made the above findings for each specific resource area.

### **Environmental Findings**

With reference to the above listed impacts and as authorized by Public Resources Code Sections 21000, et seq. and the CEQA Guidelines, Sections 15091, 15092, 15093 and 15096(f), (g) and (h), we make the findings that follow, for which there is substantial evidence in the record.

With regard to significant adverse impacts upon physiography, oil extraction, short-term air impacts, flooding, noise, population and housing, public services, and cultural resources, the City found that there was no potential for any adverse impact upon those resources. We concur with and adopt the City's conclusion and findings.

With regard to the significant adverse impacts upon risk-of-upset (hazardous waste remediation) and utilities (storm drain system impacts and solid waste disposal impacts), the City found that the project impacts can be reduced to less than significant levels with the implementation of the adopted

mitigation measures. We concur with and adopt the City's conclusion and finding.

With regard to the significant adverse impacts upon long-term cumulative air quality, the City found that the impacts are significant and unavoidable, and we concur with and adopt that finding.

### **Statement of Overriding Considerations**

Notwithstanding the disclosure of the significant long-term cumulative air quality impacts, the City determined, pursuant to the CEQA Guidelines, Section 15093, that the benefits of the project outweigh the adverse impacts and that the project should be approved. The City found that there are specific social, economic and other reasons for approving this project, notwithstanding the disclosure of the significant adverse impacts, as described and evaluated in the Draft and Final EIRs for the project. Pursuant to this finding, the City prepared and certified a Statement of Overriding Considerations.<sup>4</sup> The Commission concurs with the City's findings and finds pursuant to CEQA Guidelines, Sections 15093 and 15096(h), that there is substantial evidence in the record to determine that the benefits of the project outweigh the adverse impacts and that the project should be approved.

The specific social, economic and other reasons for approving this project, which override the unavoidable long-term cumulative air quality impacts identified in the findings, are as follows:

- elimination and prevention of the spread of blight and deterioration,

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<sup>4</sup> City of Long Beach Redevelopment Agency Resolution No. R.A. 10-96, Section V, page 12.

- promotion of public and private sector investment and improvement of the area,
- elimination or amelioration of existing environmental deficiencies, including parking and traffic, storm drainage systems, and other similar deficiencies in public services,
- retention and expansion of businesses as well as the stimulation of commercial, industrial and residential development,
- creation of increased localized job opportunities,
- increased sales, business license and other fiscal resources, and
- creation of increased housing opportunities, including affordable housing, in the project area.

**Revenue Treatment**

All revenues from the proposed lease will be treated as Other Operating Revenue (OOR). In D.99-09-070, the Commission adopted a gross revenue sharing mechanism for certain of SCE's operating revenues. The sharing mechanism applies to OOR, except for revenues that (1) derive from tariffs, fees or charges established by the Commission or by the Federal Energy Regulatory Commission; (2) are subject to other established ratemaking procedures or mechanisms; or (3) are subject to the Demand-Side Management Balancing Account.

Under the sharing mechanism, applicable gross revenues recorded from non-tariffed products and services like the proposed lease here are to be split between shareholders and ratepayers after the Commission-adopted annual threshold level of OOR has been met. For those non-tariffed products and services deemed "passive" by the Commission, the revenues in excess of the

annual threshold are split between shareholders and ratepayers on a 70/30 basis. The lease proposed here is “passive” for sharing purposes.<sup>5</sup>

### Discussion

Pub. Util. Code § 851 provides that no public utility “shall ... lease ... [property] necessary or useful in the performance of its duties to the public ... without first having secured from the [C]ommission an order authorizing it so to do.” The Commission’s role in examining transactions subject to Section 851 is the protection of the public interest.<sup>6</sup> The Commission has determined that the public interest is served when utility property is used for other productive purposes without interfering with the utility’s operations,<sup>7</sup> and such is the case here. There is in addition a clear public benefit to be gained here in that the agreement will generate revenues that will be shared between SCE and its ratepayers, thus lowering rates and at the same time enhancing the utility’s financial health and the California economy. As discussed in the CEQA Considerations section above, the proposed use has been reviewed, its

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<sup>5</sup> See Attachment B to SCE’s Advice Letter 1286-E, which identifies the *Secondary Use of Transmission Right of Ways and Land* and the *Secondary Use of Distribution Right of Ways, Land, Facilities and Substations* as categories of non-tariffed products and services. Advice Letter 1286-E was filed on January 30, 1998, pursuant to Rule VII.F of the Affiliate Transaction Rules contained in Appendix A of D.97-12-088.

<sup>6</sup> Section 853(a): “This article [Article 6, Transfer or Encumbrance of Utility Property, Sections 851 through 856] ... shall apply to any public utility ... if the commission finds ... that the application of this article is required by the public interest.”

<sup>7</sup> In D.93-04-019, p. 3, we observed: “Joint use of utility facilities has obvious economic and environmental benefits. The public interest is served when utility property is used for other productive purposes without interfering with the utility’s operation or affecting service to utility customers.”

environmental impact assessed, and the project approved by the local jurisdiction. The lease agreement provides a host of provisions addressing lessee activities that could potentially impair the site's primary public utility use; informing the lessee of potential hazards; and reserving SCE's rights to fully access the site, to use the site for other compatible, productive purposes, and to reclaim the site if necessary. We conclude that the proposed lease is in the public interest and should be approved.

**Procedural Considerations**

The Commission in Resolution ALJ 176-3082 preliminarily categorized this as a ratesetting proceeding not expected to require hearings. There are no material facts in dispute, and there is no known opposition to granting the relief requested. We conclude that it is not necessary to disturb our preliminary determinations.

This is an uncontested matter in which the decision grants the relief requested. Accordingly, the requirement for a 30-day period for public review and comment is waived as permitted by Pub. Util. Code § 311(g)(2).

**Assignment of Proceeding**

Carl W. Wood is the Assigned Commissioner and James C. McVicar is the assigned Administrative Law Judge in this proceeding.

**Findings of Fact**

1. Under terms of the lease, RHC's use of the site will not interfere with SCE's operations or facilities on the site.
2. All revenue from the lease in excess of a Commission-established threshold will be treated as other Operating Revenue and shared 70%/30% between SCE and its ratepayers, pursuant to D.99-09-070.

3. The City is the Lead Agency for the proposed redevelopment project pursuant to CEQA.

4. The Commission is a Responsible Agency for the proposed project pursuant to CEQA.

5. The City certified the North Long Beach Redevelopment Project EIR on July 2, 1996, pursuant to Resolution No. R.A. 10-96.

6. SCE's application for approval of a lease agreement with RHC falls within the North Long Beach Redevelopment Project that was the subject of the redevelopment EIR, and RHC's proposed project is consistent with the purpose of that redevelopment.

7. The City of Long Beach has reviewed RHC's specific proposal and has concluded that no supplemental or subsequent EIR is required. We concur with the City.

8. The North Long Beach Redevelopment Project EIR was prepared pursuant to CEQA and is adequate for the Commission's decision making purposes.

9. The North Long Beach Redevelopment Project objectives included among others: elimination and prevention of the spread of blight and deterioration; the promotion of public and private sector improvement of the area; creation of localized job opportunities; increased sales, business license and other resources; and the creation of increased housing opportunities in the project area.

10. Through the analysis of alternatives, the City determined that the proposed redevelopment project was the environmentally superior alternative that met the stated project objectives.

11. The Commission finds that the proposed project is consistent with the stated redevelopment project objectives, is the environmentally superior alternative, and is the preferred alternative.

12. The Final EIR found that no significant impacts would occur with respect to physiography, oil extraction, short-term air impacts, flooding, noise, population and housing, public services, and cultural resources.

13. The Final EIR found that the project will result in significant environmental effects with respect to the following issues or resources that can be reduced to less than significant levels and/or avoided with the implementation of mitigation measures: risk-of-upset (hazardous waste remediation) and utilities (storm drain system impacts and solid waste disposal impacts).

14. Pursuant to the CEQA Guidelines, Section 15096(g)(1), the Commission should adopt the mitigation measures identified in the North Long Beach Redevelopment Project EIR and in Exhibit B to Resolution No. R.A. 10-96 of the Redevelopment Agency of the City of Long Beach and make them conditions of project approval.

15. Pursuant to the CEQA Guidelines, Section 15091, the project will result in an environmental effect for long-term cumulative air quality impacts that is considered significant and unavoidable. While mitigation measures for air quality impacts would substantially lessen the impacts, the measures will not reduce air quality impacts to a less than significant level.

16. Pursuant to the CEQA Guidelines, Sections 15093 and 15096(h), there is substantial evidence in the record to determine that the benefits of the project outweigh the adverse impacts and that the project should be approved pursuant to the Statement of Overriding Considerations.

17. There is no known opposition to granting the authorization requested.

**Conclusions of Law**

1. The proposed revenue sharing conforms to the Commission's order in D.99-09-070.
2. The lease that is the subject of this application qualifies for the treatment authorized in Section 21090 of the Public Resources Code and Section 15180 of the CEQA Guidelines, and no further environmental review is required by this Commission.
3. The Commission has considered the North Long Beach Redevelopment Project EIR in its decision making process in accordance with the CEQA Guidelines, Section 15096(f).
4. Pursuant to Section 15096(g)(1) of the CEQA Guidelines, the Commission should adopt, as conditions of project approval, the mitigation measures identified in the North Long Beach Redevelopment Project EIR.
5. A public hearing is not necessary.
6. Approving the requested lease is in the public interest.
7. The application should be granted as set forth in the following order.
8. This order should be made effective immediately to allow the lease to take effect and its benefits to begin flowing to SCE and its ratepayers as soon as possible.

**O R D E R**

**IT IS ORDERED** that:

1. Southern California Edison Company (SCE) is authorized to lease to RHC Communities, LLC, a site on SCE's Lighthipe-Del Amo transmission right of way in City of Long Beach, in accordance with the terms and conditions set forth in Application 02-02-014 and this order.



2. The mitigation measures outlined in the North Long Beach Redevelopment Project EIR and adopted by the City of Long Beach Redevelopment Agency as Exhibit B to its Resolution No. R.A. 10-96 are hereby made conditions of project approval by this Commission Order. SCE shall ensure that those mitigation measures are carried out where applicable to the proposed lease.

3. All revenue from the lease shall be treated as Other Operating Revenue and subject to the sharing mechanism set forth in Decision 99-09-070.

4. SCE shall notify the Director of the Commission's Energy Division in writing of any amendments to, extension of, or termination of the lease agreement, within 30 days after such amendments are executed.

5. Application 02-02-014 is closed.

This order is effective today.

Dated \_\_\_\_\_, at San Francisco, California.